

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of:

08A-24245-MDX

3 **GREGORY MUHAMMAD, M.D.,**

4 Holder of License No. 24245
5 For the Practice of Allopathic Medicine
6 In the State of Arizona,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

(License Revocation)

7 Respondent.

8 On December 3, 2008, this matter came before the Arizona Medical Board
9 ("Board") for oral argument and consideration of the Administrative Law Judge (ALJ)
10 Diane Mihalsky's proposed Findings of Fact and Conclusions of Law and Recommended
11 Order. Gregory Muhammad, M.D., ("Respondent") appeared before the Board, Assistant
12 Attorney General Jennifer Boucek represented the State. Chris Munns, Assistant
13 Attorney General with the Solicitor General's Section of the Attorney General's Office,
14 was present and available to provide independent legal advice to the Board.

15 The Board, having considered the ALJ's decision and the entire record in this
16 matter, hereby issues the following Findings of Fact, Conclusions of Law and Order.

17 **FINDINGS OF FACT**

18 1. The Arizona Medical Board ("the Board") is the duly constituted authority for
19 licensing and regulating the practice of allopathic medicine in the State of Arizona.

20 2. Gregory Muhammad, M.D. ("Respondent") is the holder of License No. 24245
for practice as an Allopathic Physician in the State of Arizona.

21 3. On August 28, 2008, the Board issued a Complaint and Notice of Hearing on
22 three cases that had resulted from the Board's investigations into complaints that the Board
23 had received from the public, which charged Respondent with having committed acts of
24 unprofessional conduct under A.R.S. §§ 32-1401(27)(a) (specifically, A.R.S. § 12-2293(A)),
25 (e), (k), (q), (cc), (dd), (jj), and (ll).

4. The Complaint and Notice of Hearing also set an administrative hearing on October 21, 2008 at 9:00 a.m. The Board mailed the Complaint and Notice of Hearing via certified mail to Respondent at his address of record.

5. An administrative hearing was held on October 21, 2008 at 9:00 a.m., at which the Board appeared through its attorney. Although the beginning of the duly noticed hearing was delayed fifteen minutes to allow Respondent additional travel time, he neither appeared, personally or through an attorney, contacted the Office of Administrative Hearings to request a continuance or that the time for the hearing be further delayed, nor presented any evidence to defend his license.

6. The Board presented the testimony of its Case Manager Celina Shepherd and Outside Medical Consultant Roscoe Nelson, M.D. and had admitted into evidence 21 exhibits.

Case No. MD-07-0268A

7. The Board opened case number MD-07-0268A after the Board received information that Respondent may have aided Marvin L. Gibbs, M.D. in the practice of medicine after Dr. Gibbs' license had been suspended on August 28, 2006.

8. Pharmacy records showed that Respondent had written large amounts of medication to treat erectile dysfunction to Dr. Gibbs' office, Universal Health and Wellness, from December 2006 through February 2007.

9. Ms. Shepherd testified that, when Board staff interviewed Respondent in April 2007, he told staff that he had only seen two or three of Dr. Gibbs' patients in November 2006.

10. In June 2007, Respondent testified at Dr. Gibbs' administrative hearing that he had treated Dr. Gibbs' patients between November 2006 and February 2007.

11. Respondent also testified at Dr. Gibbs' administrative hearing that someone in Dr. Gibbs office would fill out the body of the prescriptions for the patients and Respondent signed the prescriptions.

12. Although the Board requested that Respondent provide patient records, he failed to do so. The Board eventually obtained patient records from Dr. Gibbs pursuant to subpoena. The records showed that Respondent had treated Dr. Gibbs' patient A.G. on

1 December 13, 2006 and had crossed out Dr. Gibbs' signature on a prescription and had
2 written his own signature.

3 13. A.G.'s medical records also contained a prescription signed by Respondent for
4 patient F.P.

5 14. The Board eventually obtained records for nine of the patients whom
6 Respondent had treated at the Universal Health and Wellness practice.

7 15. Dr. Nelson is a Board certified urologist who has been in practice for 13 years.
8 Approximately 10% of his practice involves erectile dysfunction.

9 16. Dr. Nelson reviewed the medical records for the nine patients. The patients
10 ranged in age from 20 to 57. All patients were treated with injections. Eight of the patients
11 had been diagnosed with erectile dysfunction and one, A.G., had been diagnosed with
12 premature ejaculation.

13 17. Respondent had not evaluated any of the patients for co-morbidities, such as
14 cardiovascular disease, hypertension, diabetes mellitus, myocardial infarction, and
15 peripheral vascular disease. Dr. Nelson testified that the same things that can cause
16 erectile dysfunction can cause these co-morbidities. The standard of care therefore
17 requires such evaluation.

18 18. Respondent had not counseled or treated any of the patients who admitted
19 smoking for smoking cessation. Dr. Nelson testified that, because smoking can worsen the
20 conditions that cause erectile dysfunction, the standard of care requires practitioners to
21 refer patients who smoke to smoking cessation programs. The physician should also
22 counsel overweight patients to lose weight.

23 19. Dr. Nelson testified that there are three levels of treatment for patients with
24 erectile dysfunction: (1) pills such as Viagra or Cialis; (2) penile injections, a penile pump,
25 or an intraurethral suppository; and (3) penile prothesis.

20 20. All of Respondent's patients were given injections, instead of being offered
21 other options. In Dr. Nelson's experience, only 10% to 20% of patients with erectile
22 dysfunction require injections. Dr. Nelson had to infer that Respondent was running a
23 treatment mill, in which all patients were treated alike regardless of their condition, contra-
24 indications, or co-morbidities.

1 21. Dr. Nelson testified that, if an injection is prescribed, the physician should
2 demonstrate technique to the patient. There was no evidence that Respondent did this.

3 22. Patient A.G. complained of premature ejaculation. Dr. Nelson testified that the
4 usual treatment for this condition was low dose SSRI's. Instead, Respondent gave A.G.
5 injections, which Dr. Nelson testified were not indicated.

6 23. Respondent also gave Patient A.G. Sudafed for retrograde ejaculation, which
7 Dr. Nelson explained means when the sperm goes into the patient's bladder and may
8 affect fertility. A.G.'s blood pressure was 130/80, which is borderline high. Sudafed was
9 not indicated because it raises blood pressure. A.G. should have been taught techniques
10 or given SSRI's, which Respondent did not do.

11 24. Trimex is a combination of three medications that, when injected, will cause an
12 erection by forcing blood into the penis. Dr. Nelson testified that, although other drugs
13 have lesser side effects, all nine patients were given Trimex by Respondent or Dr. Burke.

14 25. Dr. Nelson testified that a normal dose of Trimex is 3 cc's per patient, which
15 the patient should be instructed to administer $\frac{1}{4}$ or $\frac{1}{2}$ cc per injection. The dose should last
16 six months. Over 210 days, the nine patients were given two doses for every day, even
17 though administration is recommended at most every other day. Respondent wrote the
18 prescriptions to Dr. Gibbs or to Universal Health Care. Dr. Nelson testified that he
19 assumes that the Trimex was given to patients and testified that it would have been
20 dangerous to give even one-tenth the amount prescribed to the number of patients
21 evidenced by the records. He assumes from the volume of Trimex that Respondent
22 prescribed that undocumented patients received injections.

23 26. Dr. Nelson testified that some of Respondent's patients were young men.
24 Younger men may suffer from psychogenic treatments. Younger men also may use
25 treatment for erectile dysfunction as a recreational drug. They may end up with priapism,
or an erection that lasts more than four hours. Priapism requires surgery to correct and,
after surgery, patients may experience erectile dysfunction for the rest of their lives.

 27. Dr. Nelson testified that Respondent's treatment of the nine patients and
others betrayed a lack of understanding about the disease process.

28. With respect to Respondent's prescriptions, Dr. Nelson testified that the standard of care requires a physician to include on his prescription the patient's name, the date, the identity of the drug prescribed, the amount of the drug, the number of pills, the method of administration, whether refills were available, the physician's signature, and the physician's license number. Respondent's prescriptions were deficient in that they did not clearly state the medication, directions for administration were assumed, and the prescriptions were undated. A pharmacist should have been suspicious and should have asked Respondent to rewrite the prescriptions.

29. Dr. Nelson testified that a physician may sign off on a prescription written by a nurse practitioner or medical assistant if the physician has reviewed the prescription and seen the patient. The records did not show that Respondent had seen all the patients to whom prescriptions had been written or drugs administered.

30. Dr. Nelson testified that, with respect to the harm to patients caused by Respondent's practices, there was a prescription for an antibiotic in the records, which indicated an infection from the injection. But the greater harm would be seen down the road in the form of heart attacks and strokes.

Case No. MD-07-1136A

31. The Board initiated investigation MD-07-1136A after receiving complaints regarding Respondent's failure to provide medical records to multiple patients in a timely manner.

32. Patients RB, RT, TP, JE, KC, CU, DS, and ER all filed complaints with the Board that they had requested medical records from Respondent's own office, Abundant Life, and had not received them.

33. On December 20, 2007, Patient RT sent Respondent a second request in writing for his medical records, after Respondent closed his office. Respondent did not provide them.

34. According to the Patient RB's complaint, on October 9, 2007, RB's attorneys made a written request for his medical records and billing statements, enclosing an authorization form signed by RB. On October 22, 2007, they requested the records a second time. On November 8, 2007, the attorneys' staff called Respondent's office and

1 spoke to an employee, who stated that the records would be sent. On November 13,
2 2007, the attorneys called Respondent's office and were told the records had been mailed.
3 After the records were not received, the attorneys' staff called Respondent's office again on
4 December 4, 2007, but no one answered. The attorneys could not leave a message
5 because Respondent's mailbox was full. The same happened the following morning, but in
6 the afternoon someone answered the telephone, who said that the office was closed but
7 would comply with the request for records. Follow-up telephone calls made on December
8 10, 11, and 14, 2007 were unanswered. The attorneys sent a letter to Respondent on
9 January 18, 2008, again requesting RB's records. The records were never provided.

10 35. Board staff contacted Respondent numerous times in December 2007 through
11 March 2008. Respondent did not respond to Board inquiries and failed to show that he
12 had provided the patients with their medical records.

13 36. On January 17, 2008, Board staff contacted Respondent by telephone. He
14 stated that he knew nothing about the Board's requests and that he had not received the
15 Board's letters about the case because he had been in the Arizona Heart Hospital. Staff
16 contacted the hospital, who stated that they had never had a patient admitted under
17 Respondent's name, date of birth, or social security number.

18 37. Respondent did not provide the requested medical records after numerous
19 requests from the Board, including documented requests on December 20, 2007,
20 December 27, 2007, December 31, 2007, January 17, 2008, February 20, 2008, and
21 March 21, 2008.

22 **Case No. MD-08-0078A**

23 38. The Board initiated investigation MD-08-0078A after two patients complained
24 that Respondent had abandoned them without notice when he closed his office. Both
25 patients had gone to his office for scheduled appointments. Both additionally alleged that
Respondent failed to provide copies of their medical records.

39. Board staff requested Respondent to provide information regarding the
allegations on February 1, 2008, on February 28, 2008, and on March 25, 2008.

Respondent failed to respond to the Board's letters and failed to provide any information.

CONCLUSIONS OF LAW

1. This matter lies within the Board's jurisdiction.¹

2. The notice of the hearing that the Board mailed to Respondent's address of record was reasonable; Respondent is deemed to have received notice of the hearing.²

3. The Board bears the burden of proof and must establish Respondent's unprofessional conduct and cause to discipline his license by a preponderance of the evidence.³ "A preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not."⁴ A preponderance of the evidence is "[t]he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."⁵

4. The Board therefore has established that Respondent committed unprofessional conduct as defined by A.R.S. §§ 32-1401(27)(a) "Violating any federal or state laws, rules or regulations applicable to the practice of medicine" (specifically, A.R.S. § 12-2293(A) A.R.S. § 12-2293(A) provides that, "[e]xcept as provided in subsections B and C of this section, on the written request of a patient or the patient's health care decision maker for access to or copies of the patient's medical records and payment records, the health care provider in possession of the record shall provide access to or copies of the records to the patient or the patient's health care decision maker."), (e) "Failing or refusing to maintain adequate records on a patient", (k) "Signing a blank,

¹ A.R.S. §§ 32-1451 *et seq.* and 41-1092 *et seq.*

² See A.R.S. §§ 41-1092.04; 41-1092.05(D); 41-1061(A).

³ See A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; *see also Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

⁴ Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

⁵ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 undated or predated prescription form", (q) "Any conduct or practice that is or might be
2 harmful or dangerous to the health of the patient or the public," (cc) "Maintaining a professional
3 connection with or lending one's name to enhance or continue the activities of an illegal
4 practitioner of medicine," (dd) "Failing to furnish information in a timely manner to the board or the
5 board's investigators or representatives if legally requested by the board," (jj) "Knowingly making
6 a false or misleading statement to the board or on a form required by the board or in a written
7 correspondence, including attachments, with the board," and (ll) "Conduct that the board
8 determines is gross negligence, repeated negligence or negligence resulting in harm to
9 or death of a patient."

10 5. With respect to the penalty, there is no previous discipline against
11 Respondent's license, in part because all three cases were consolidated for hearing. But
12 Respondent's persistent acts of unprofessional conduct, misrepresentations,
13 evasiveness, and refusal to provide information to the Board indicate that he is unwilling
14 to be subject to the Board's regulatory powers.

15 **ORDER**

16 Based on the foregoing, it is hereby Ordered that Gregory Muhammad, M.D.'s
17 License No. 24245 for the practice as an allopathic physician in the State of Arizona be
18 revoked. Pursuant to A.R.S. § 32-1451.M and A.R.S. § 41-2007, Respondent shall pay
19 costs of the administrative hearing.

20 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

21 Respondent is hereby notified that he has the right to petition for a rehearing or
22 review. The petition for rehearing or review must be filed with the Board's Executive
23 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
24 petition for rehearing or review must set forth legally sufficient reasons for granting a
25 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days
after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not

1 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
2 Respondent.

3 Respondent is further notified that the filing of a motion for rehearing or review is
4 required to preserve any rights of appeal to the Superior Court.

5 DATED this 4th day of December, 2008.



THE ARIZONA MEDICAL BOARD

10 By *Lisa Wynn*
LISA WYNN
Executive Director

11 ORIGINAL of the foregoing filed this
12 *4th* day of December, 2008 with:

13 Arizona Medical Board
14 9545 East Doubletree Ranch Road
15 Scottsdale, Arizona 85258

16 Executed copy of the foregoing
mailed by U.S. Mail this
4th day of December, 2008, to:

17 Gregory Muhammad, M.D.
18 Address of Record

19 Emma Mamaluy
20 Arizona Attorney General CIV/LES
21 1275 W. Washington
Phoenix AZ 85007

22 *Chris Bump*
23
24
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